

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Warrenton, Oregon)

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MM Docket No. 99-157
RM-9614

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF FISHER BROADCASTING, INC.

Fisher Broadcasting, Inc. ("Fisher"), pursuant to the Commission's Notice of Proposed Rule Making ("NPRM"), MM Docket No. 99-157, released May 14, 1999, hereby opposes the proposed amendment of the FM Table of Allotments to allot Channel 259A to Warrenton, Oregon.

1. The Commission's NPRM, responding to a petition for rule making by Mountain West Broadcasting ("Mountain West"), indicates that the allotment would require a site restriction of 13.9 kilometers (8.6 miles) northwest to avoid a short-spacing to Station KWJJ-FM, Channel 258C1, Portland, Oregon. For the following reasons, Fisher, the licensee of KWJJ-FM, contends that the petition for rule making by Mountain West is defective and that the Commission should refrain from allotting the proposed Channel 259A at Warrenton, Oregon.

2. According to Mountain West's petition for rule making, the coordinates specified in the NPRM (N 46-16-49 x W 123-59-13) are of a site 13.9 kilometers north of the community of Warrenton. In addition, the petition states that there are many suitable sites available to provide coverage to the entire city.¹ Based on an independent engineering study, however,

¹ Mountain West, Petition for Rule Making, at ¶7.

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Fisher has determined that the proposed coordinates are in fact located offshore and therefore do not reflect a possible transmitter site. As the engineering statement attached hereto shows, the site coordinates N 46-16-49 x W 123-59-13 specified in the NPRM are located in the middle of the Columbia River. As such, the coordinates are clearly unsuitable for an allotment site, for as the Commission has stated, “[w]e have consistently rejected any proposed reference sites that fall within bodies of water.”² Additionally, building a structure in the middle of a navigable waterway would require permission from the U.S. Army Corps of Engineers, which is authorized to prohibit structures or work affecting navigable waters of the United States.³

3. Moreover, even if the reference coordinates were on dry land, the proposed facility would not be able to provide city grade coverage to the entire city of Warrenton, Oregon. According to Section 73.315(a) of the Commission’s Rules, the transmitter location of a commercial FM station must be “chosen so that, on the basis of the effective radiated power and

² Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Clesiston, et al.), 10 FCC Rcd 6548 at ¶10 (Policy & Rules Div., 1995). See also, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Spring Hill, Florida), 3 FCC Rcd 5220 (Policy & Rules Div., 1988) (denying a petition for allotment because it contemplated a site located in a marsh area prone to floods and there were no other suitable sites); 47 C.F.R. §73.3573(a), Note 1 (stating that “examples of unsuitable allotment reference sites include those which are offshore...”)

³ “The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States... except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army...” Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. §403. See also, 33 C.F.R. §322.3(a) (1998)(stating, “Department of the Army permits are required under section 10 for structures and/or work in or affecting navigable waters of the United States...”)

antenna height above average terrain employed, a minimum field strength of 70 dB above one uV/m (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served.”⁴ In this case, however, the proposed allotment for Warrenton, Oregon fails to satisfy this fundamental requirement that the station cover the entire community of license with a city grade signal. The reference coordinates set forth in Mountain West’s petition as the potential site for the new channel are dually deficient in that the site is located offshore in a body of water and that service could not be provided to the entire city from the site.

4. Furthermore, the only land in proximity to the proposed coordinates are sandbars in the Columbia River which are only exposed at low tide and thus not suitable as potential locations for a station or transmitter. The attached engineering study shows that the nearest piece of land is in fact little more than a glorified sandbar. The island, marked as Sand Island Military Reservation on the attached topographical map, is in reality a sandbar formerly used by the U.S. Army Corps of Engineers to deposit sand after dredging the river. The transient and unstable nature of this pile of sand renders it unsuitable as a potential transmitter site. Moreover, as Sand Island is owned by the United States government and controlled by the Army Corps of Engineers, the petitioner would have to show its availability for private use, which the petitioner has not done.⁵

⁴ 47 C.F.R. §73.315(a).

⁵ In considering the use of a historic lighthouse controlled by the National Park Service, the Commission stated that, “[w]hen a site is controlled by a government agency, ‘a mere willingness by the government agency to entertain a request for the use of the land in question is sufficient to provide reasonable assurance of the site’s availability.’” Warren Price Communications, Inc., et al., 5 FCC Rcd 2906, 2908 (1990), quoting, Alden Communications Corp., 3 FCC Rcd 3937, 3938 (1988). Here, however, the petitioner has not even established a

5. In addition, just as with the coordinates proposed in the NPRM, the problem remains that even if the allotment site were to be relocated onshore the proposed facility would not be able to provide city grade coverage to the entire city of Warrenton, Oregon. The engineering study conducted on Fisher's behalf identifies two locations close to the reference coordinates that might be viewed as alternative allotment sites for Channel 259A, however, neither site can provide a signal that will encompass the entire incorporated city of Warrenton. The attached engineering statement shows only a very small area which is fully spaced from KWJJ-FM and from which a city grade signal could be provided to all of Warrenton. However, that area is offshore of the mouth of the Columbia River, an area of high ship traffic noted for its rough and unpredictable seas. Therefore, while Mountain West heralds the allotment of the proposed channel as being the community's first local aural service, in reality there does not appear to be a site anywhere on the mainland from which a new station could reach 100% of the city of Warrenton.


willingness by the government to entertain the use of Sand Island Military Reservation as a potential transmitter site, and thus petitioner has not established the site's availability.

CONCLUSION

Although Mountain West's petition for rule making indicates that the allotment of Channel 259A to Warrenton would "meet all rules and requirements of the Commission,"⁶ an independent engineering study has determined that is not the case. Based on the deficiencies articulated above, the proposed amendment of the Table of Allotments to allot Channel 259A at Warrenton, Oregon should be denied and this rule making should be concluded.

Respectfully submitted,

FISHER BROADCASTING, INC.

BY: 
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Its attorneys

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Dated July 6, 1999

⁶Mountain West, Petition for Rule making, at ¶5.

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ENGINEERING STATEMENT

IN SUPPORT OF COMMENTS IN MM DOCKET NO. 99-157

PREPARED FOR
FISHER BROADCASTING, INC.

5/99

Engineering Statement

This Engineering Statement has been prepared on behalf of Fisher Broadcasting, Inc. ("Fisher") in support of comments filed in MM Docket No. 99-157. Fisher is the licensee of station KWJJ(FM) Channel 258C1 at Portland, Oregon.

In MM Docket No. 99-157, Mountain West Broadcasting ("Mountain West") proposes the allotment of Channel 259A at Warrenton, Oregon, as that community's first local service. This engineering statement will demonstrate that the Mountain West proposal is defective, and should be denied.

The Notice of Proposed Rulemaking issued in MM Docket No. 99-157 correctly notes that the Warrenton proposal requires a site restriction in order to avoid a short-spacing to KWJJ(FM). However, as demonstrated by the attached map exhibit, the allotment coordinates specified in the NPRM (NL 46-16-49 x WL 123-59-13) are located in the middle of the Columbia River. Since this site is located offshore, it cannot be said to qualify as a suitable allotment site.

The U.S. Geological Survey 7.5 minute map of the Chinook Quadrangle, photorevised in 1984, indicates that the allotment site specified in the NPRM is near several sand bars which are only exposed at low tide. None of these sand bars would qualify as a suitable allotment site.

Even were the Warrenton 259A allotment site to be relocated to a location onshore, the allotment would remain defective because it would not be possible to encompass 100% of Warrenton within a 16 kilometer radius of the allotment site. The nominal distance to the 70 dBu F(50,50) contour for a Class A station is 16 kilometers. Therefore, that is the

Hatfield & Dawson Consulting Engineers

appropriate distance to use in evaluating whether a new FM allotment would comply with principal community coverage requirements.

Warrenton is an incorporated city in the State of Oregon, and as such has specific boundaries. Two onshore locations have been identified as potential alternative allotment sites for Channel 259A at Warrenton, but neither site can encompass 100% of Warrenton within a 16 kilometer radius of the site.

Site #1 is located at NL 46-17-23 x WL 123-57-47, on the Washington side of the Columbia River, 2.1 kilometers northeast of the allotment site listed in the NPRM. As demonstrated in the attached channel study, this site meets the co-channel and adjacent channel spacing requirements for Class A stations as prescribed in §73.207 of the Commission's Rules. However, the attached map exhibit demonstrates that a portion of the City of Warrenton clearly lies outside of a 16 kilometer arc from Site #1.

Site #2 is located at NL 46-15-54 x WL 124-00-08, at the southeastern end of Sand Island in the Columbia River, 2.1 kilometers southwest of the allotment site listed in the NPRM. Sand Island is located in Clatsop County, Oregon. Sand Island is an uninhabitable sand bar which comprises the Sand Island Military Reservation. The shoreline of Sand Island shifts over time, as sand is deposited and carried away by the flow of the Columbia River. Consequently, Fisher does not represent that a location on Sand Island would qualify as a suitable allotment site. Nevertheless, it is included here as an alternative site because it is the point of "land" closest to the City of Warrenton, which (as demonstrated in the attached channel study) meets the co-channel and adjacent channel spacing requirements for Class A stations as prescribed in §73.207 of the Commission's Rules. However, the attached map exhibit demonstrates that a portion of the City of Warrenton clearly lies outside of a 16 kilometer arc from Site #2.

Furthermore, an additional Allocation Study Map has been included to demonstrate that there is no location on land which both meets the spacing requirements of §73.207 and

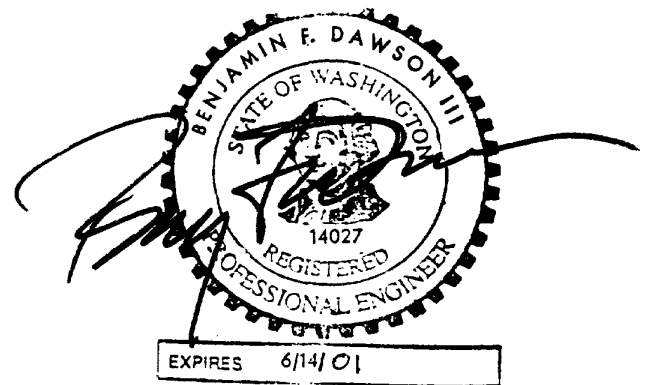
which will encompass 100% of the City of Warrenton within a 16 kilometer arc. In order to demonstrate this, a 16 kilometer arc has been drawn from that corner of Warrenton (at NL 46-09-13 x WL 123-51-45) which is furthest from the arc depicting the spacing requirement to KWJJ. This exhibit shows that only a very small area within the 16 kilometer arc lies outside the spacing restriction to KWJJ, and all of that very small area lies over water.

Conclusion

There are no onshore locations close enough to the City of Warrenton to encompass 100% of the city within a 16 kilometer radius. Therefore, since 100% encompassment of the proposed community of license is an absolute requirement at the allotment stage, the proposed allotment of Channel 259A at Warrenton, Oregon is defective and must be denied.

I, Benjamin F. Dawson III, hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

Signed this 26th day of May, 1999.



Benj. F. Dawson III, P.E.

Seattle, WA

FM SEPARATION STUDY

Job Title :Site #1

Separation Buffer 100 km

FCC DB Date : 05/12/99

Channel 259A (99.7 MHz)

Coordinates : 46-17-23 123-57-47

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
NEW APP Amended	Littell WA	BPED960619ME 970912	205A 88.9	.540 318.0	DA 46-33-18 123-03-25	66.7	75.65 65.65	10 CLEAR
NEW APP Amended	Chehalis WA	BPED960325MD 960611	205C3 88.9	1.0 306.0	46-33-18 123-03-25	66.7	75.65 63.65	12 CLEAR
K205CY LIC	Tillamook OR	BLFT980617TQ	205D 88.9	.05 40.0	45-27-12 123-52-06	175.5	93.26 .00	0 TRANS
Translator for KLVCFM, Magalia, CA								
NEW-T APP	Chinook WA	BPFT981216TB	206D 89.1	.014 423.0	46-17-10 123-53-50	94.5	5.10 .00	0 TRANS
Translator for KAWZ, Twin Falls, ID.- Vertical Polarization Only								
KAYOFM LIC	Aberdeen WA	BLH950626KE	257C1 99.3	39. 432.0	DA 46-54-05 123-25-07	31.3 SS	79.78 4.78	75 CLOSE
Accepted by Canada as a specially negotiated short-spaced station by letter dated 901220								
KAYO-FM10 CP	Olympia, Lacey & Tum WA	BMPFTB981124TA	257D 99.3	1.0 159.0	47-00-57 122-54-58	44.3	113.76 .00	0 BOOST
Booster for KAYO FM, Aberdeen, WA								
KWJJFM LIC	Portland OR	BLH911106KG	258C1 99.5	52. 386.0	45-29-20 122-41-40	131.7	132.75 -.25	133 SHORT
FR ADD PADD	Warrenton OR	RM9614	259A 99.7	. .0	46-16-49 123-59-13	240.2	2.13 -112.87	115 SHORT
Drop-in, Site restricted 13.9 km NW of Warrenton								
K259AA LIC	Seattle-Alki Beach WA	BLFT860313TP	259D 99.7	.019 21.0	47-34-45 122-24-33	38.9	185.89 .00	0 TRANS
TRANSLATOR FOR KISW, SEATTLE, WA								
KRKTFM LIC	Albany OR	BLH7499	260C 99.9	100. 326.0	44-38-46 123-16-11	163.3	190.56 25.56	165 CLEAR
KISW LIC	Seattle WA	BLH850916KK	260C 99.9	100. 350.0	47-32-41 122-06-28	44.6	198.60 33.60	165 CLEAR
SPECIAL NEGOTIATED SHORT-SPACED ALLOCATION								

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Seattle, WA

FM SEPARATION STUDY

Job Title :Site #1

Separation Buffer 100 km

Channel 259A (99.7 MHz)

FCC DB Date : 05/12/99
Coordinates : 46-17-23 123-57-47

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
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KISW	Seattle		260C	58.0	DA	47-30-14	47.5	202.92	165
APP	WA	BPH990222ID	99.9	714.0		121-58-29	SS	37.92	CLEAR
SPECIAL NEGOTIATED SHORT-SPACED ALLOCATION									

KKRZ	Portland		262C	100.		45-31-22	131.9	126.89	95
LIC	OR	BLH870206KB	100.3	437.0		122-45-07		31.89	CLEAR

** End of separation study for channel 259A **

Seattle, WA

FM SEPARATION STUDY

Job Title :Site #2

Separation Buffer 100 km

FCC DB Date : 05/12/99

Channel 259A (99.7 MHz)

Coordinates : 46-15-54 124-00-08

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
NEW APP Amended	Littell WA	BPED960619ME 970912	205A 88.9	.540 318.0	DA 46-33-18 123-03-25	65.7	79.52 69.52	10 CLEAR
NEW APP Amended	Chehalis WA	BPED960325MD 960611	205C3 88.9	1.0 306.0	46-33-18 123-03-25	65.7	79.52 67.52	12 CLEAR
K205CY LIC	Tillamook OR	BLFT980617TQ	205D 88.9	.05 40.0	45-27-12 123-52-06	173.4	90.82 .00	0 TRANS
Translator for KLVCFM, Magalia, CA								
NEW-T APP	Chinook WA	BPFT981216TB	206D 89.1	.014 423.0	46-17-10 123-53-50	73.7	8.44 .00	0 TRANS
Translator for KAWZ, Twin Falls, ID.- Vertical Polarization Only								
KAYOFM LIC	Aberdeen WA	BLH950626KE	257C1 99.3	39. 432.0	DA 46-54-05 123-25-07	32.0 SS	83.71 8.71	75 CLOSE
Accepted by Canada as a specially negotiated short-spaced station by letter dated 901220								
KAYO-FM	Olympia, Lacey & Tum	257D	1.0	47-00-57	44.4	117.83	0	
CP	WA	BMPFTB981124TA	99.3	159.0	122-54-58	.00	BOOST	
Booster for KAYO FM, Aberdeen, WA								
KWJJFM LIC	Portland OR	BLH911106KG	258C1 99.5	52. 386.0	45-29-20 122-41-40	130.0	133.24 .24	133 CLOSE
FR ADD PADD	Warrenton OR	RM9614	259A 99.7	.0	46-16-49 123-59-13	34.6	2.08 -112.92	115 SHORT
Drop-in, Site restricted 13.9 km NW of Warrenton								
K259AA LIC	Seattle-Alki Beach WA	BLFT860313TP	259D 99.7	.019 21.0	47-34-45 122-24-33	39.0	189.92 .00	0 TRANS
TRANSLATOR FOR KISW, SEATTLE, WA								
KRKTFM LIC	Albany OR	BLH7499	260C 99.9	100. 326.0	44-38-46 123-16-11	162.1	188.84 23.84	165 CLEAR
KISW LIC	Seattle WA	BLH850916KK	260C 99.9	100. 350.0	47-32-41 122-06-28	44.6	202.67 37.67	165 CLEAR
SPECIAL NEGOTIATED SHORT-SPACED ALLOCATION								

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Seattle, WA

FM SEPARATION STUDY

Job Title :Site #2

Separation Buffer 100 km

FCC DB Date : 05/12/99

Channel 259A (99.7 MHz)

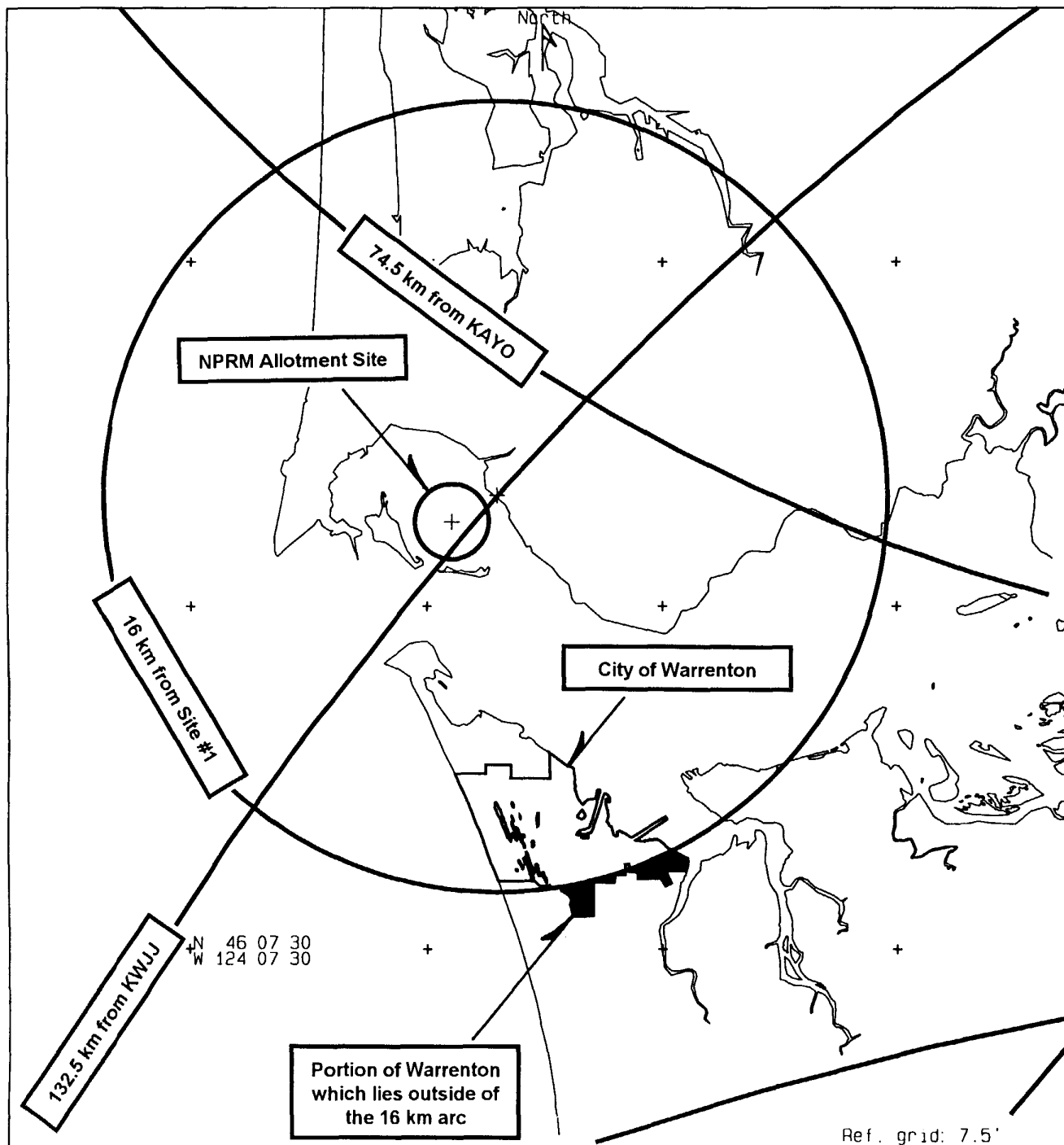
Coordinates : 46-15-54 124-00-08

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
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KISW	Seattle		260C	58.0	DA	47-30-14	47.5	207.00	165
APP	WA	BPH990222ID	99.9	714.0		121-58-29	SS	42.00	CLEAR
SPECIAL NEGOTIATED SHORT-SPACED ALLOCATION									

KKRZ	Portland		262C	100.		45-31-22	130.0	127.38	95
LIC	OR	BLH870206KB	100.3	437.0		122-45-07		32.38	CLEAR

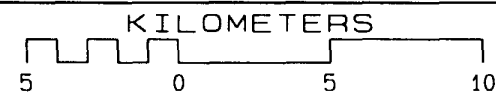
** End of separation study for channel 259A **



HATFIELD & DAWSON

SEATTLE, WA

This map exhibit is included to demonstrate that an onshore Channel 259A allotment site at Site #1 described herein would not encompass 100% of the City of Warrenton within a 16 kilometer arc.



Site No. 1

Hatfield and Dawson

May 1999

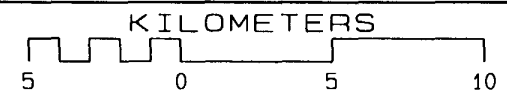
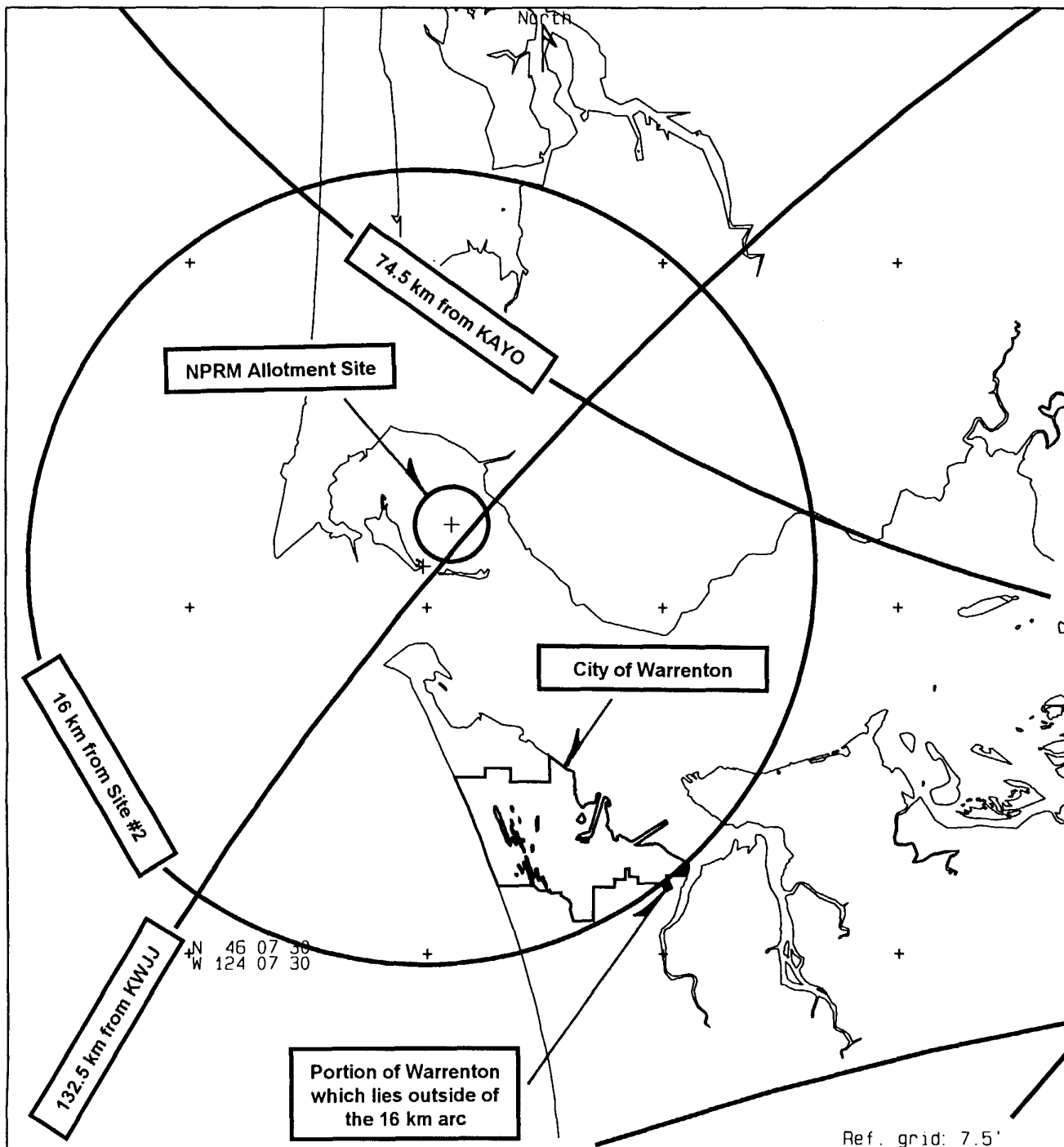
Exhibit

HATFIELD & DAWSON

SEATTLE, WA

This map exhibit is included to demonstrate that an onshore Channel 259A allotment site at Site #2 described herein would not encompass 100% of the City of Warrenton within a 16 kilometer arc.

The shoreline of Sand Island shifts over time, as sand is deposited and carried away by the flow of the Columbia River. Consequently, Fisher does not represent that a location on Sand Island would qualify as a suitable allotment site. Nevertheless, it is included here as an alternative site because it is the point of "land" closest to the City of Warrenton, which meets the co-channel and adjacent channel spacing requirements for Class A stations as prescribed in §73.207 of the Commission's Rules.



Site No. 2

Hatfield and Dawson

May 1999

Exhibit

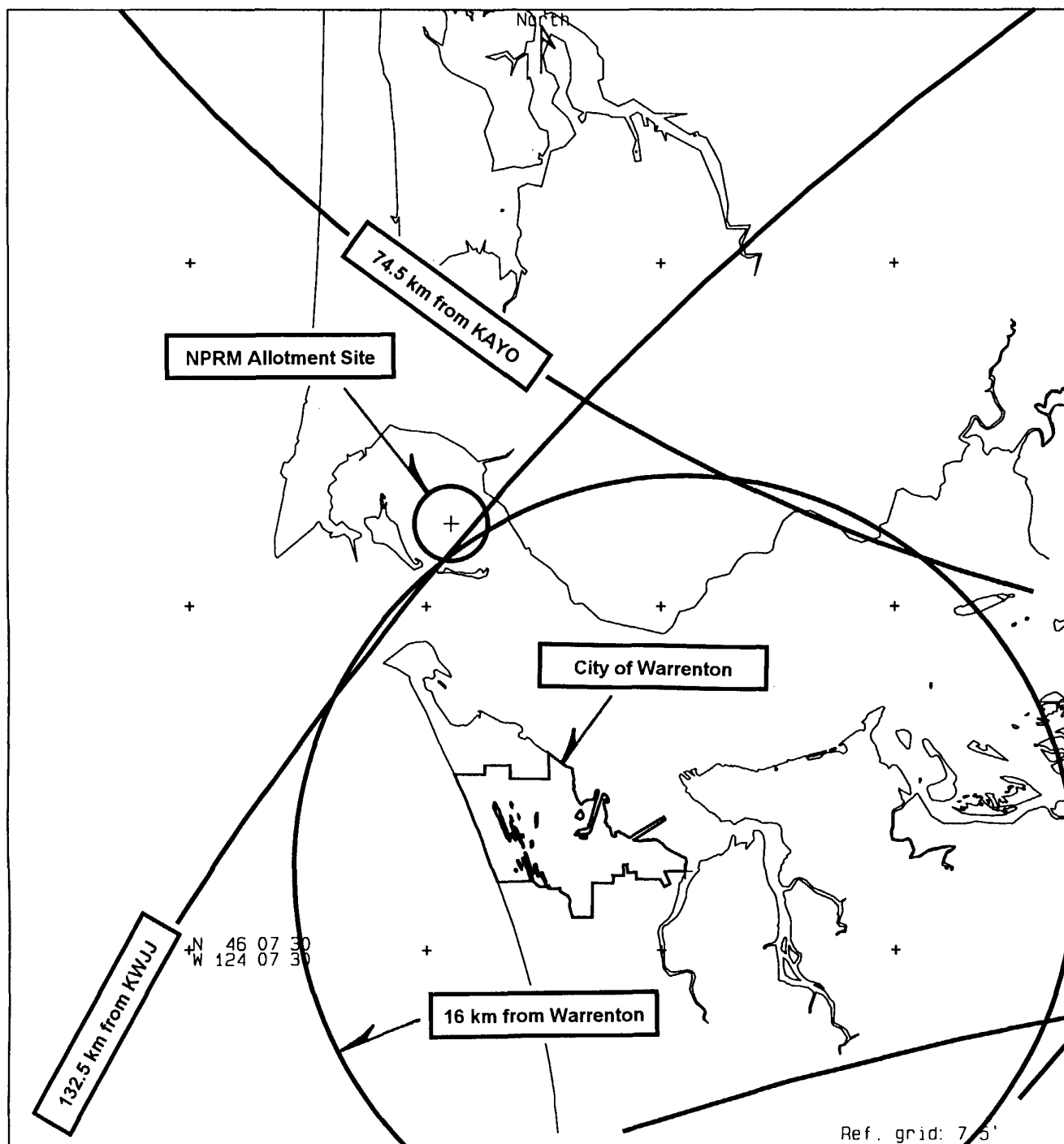
Ref. grid: 7.5'

HATFIELD & DAWSON

SEATTLE, WA

This map exhibit is included to demonstrate that there is no location on land which both meets the spacing requirements of §73.207 and which will encompass 100% of the City of Warrenton within a 16 kilometer arc.

In order to demonstrate this, a 16 kilometer arc has been drawn from that corner of Warrenton which is furthest from the arc depicting the spacing requirement to KWJJ.



KILOMETERS

5 0 5 10

Allocation Study Map

Hatfield and Dawson

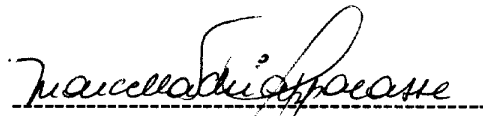
May 1999

Exhibit

CERTIFICATE OF SERVICE

I, Marcella Schiappacasse, a secretary with the law firm of Fisher Wayland Cooper Leader & Zaragoza, L.L.P., do hereby certify that a copy of the foregoing "Comments of Fisher Broadcasting, Inc." was this 6th day of July, 1999 served by mail on:

Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009



Marcella Schiappacasse